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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

**ORDER RE EX PARTE MOTIONS**

IVAN CERNA, et al.,

Defendants.

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Attorney Martin Sabelli, counsel for defendant Herrera, has filed two *ex parte* and under seal motions with accompanying materials. Counsel seeks to keep both motions *ex parte* and under seal and, in one motion, seeks leave to defer an issue until after a deadline of September 30, 2009, in the final scheduling order. Contrary to Attorney Sabelli, this date is not a deadline for the filing of any superseding indictment but rather is a date by which “any additional charges added to this case . . . shall be presumptively severed.”

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The motions are **DENIED**. Although narrowly tailored sealing requests will be considered where good cause is shown, and *ex parte* proceedings are allowed on very rare occasions, counsel has cited no authority, and the Court knows of none, by which the type of secret proceedings requested by Attorney Sabelli would be permitted. *See, e.g.*, Crim. Local Rule 55-1(b); *United States v. Abuhamra*, 389 F.3d 309, 328–29 (2d Cir. 2004). This is particularly true given that one purpose of the exercise appears to be to sandbag the government until it allegedly is too late to cure an alleged flaw in the indictment.

1           Therefore, by **FRIDAY, JULY 17, 2009, AT NOON**, Attorney Sabelli must elect whether to  
2 withdraw the motions or publicly serve them on the government. If counsel fails by this  
3 deadline either to withdraw the motions or to re-file the motions publicly and serve them on the  
4 government, the motions will be deemed withdrawn. Attorneys have a duty zealously to  
5 advocate for their clients, but this duty does not contemplate one-sided advocacy in secret  
6 where the other side has no say. Defendant is granted relief in the limited respect that the  
7 motions will remain under seal until Friday, when they must be either publicly re-filed and  
8 served or deemed withdrawn; the application to file under seal is otherwise **DENIED**.

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10           **IT IS SO ORDERED.**

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12           Dated: July 14, 2009.

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15           WILLIAM ALSUP  
16           UNITED STATES DISTRICT JUDGE